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| 10/553,300      | 10/14/2005  | Gerhard Meixner      | 3473                | 1889             |

7590  
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08/07/2007

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| EXAMINER |
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NASH, BRIAN D

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| ART UNIT | PAPER NUMBER |
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3721

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08/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/553,300

Applicant(s)

MEIXNER ET AL.

Examiner

Brian Nash

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Examiner's Comments***

1. This action is in response to applicant's amendment received 4/20/2007. Applicant cancelled all previous claims. The pending claims are now 9-16.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, it is not clear what applicant is claiming or what limitations are encompassed by the claim. Specifically, is applicant claiming a portion of, i.e. a percussion mechanism sub-assembly of a hand power tool or is it applicant's intention to claim the combination of a hand power tool comprising a rotary hammer moveable in a guide barrel that further comprises the claimed percussion mechanism sub-assembly? Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by GB 2285007A to Muetschele et al. Muetschele et al show the same percussion mechanism for a hammering tool:

With respect to claim 1, a striker (17) axially displaceable in a guide barrel (15), a device (16) that exerts pressure on the striker such that the striker moves forward in the direction of a tool bit, a blocking element (47,48 – see Figs. 2,5) capable of blocking the striker (17) in its forward motion and the

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striking frequency of the percussion mechanism is capable of being adjusted by controlling the time of which the blocking element prevents forward movement of the striker.

6. Claims 9-12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,675,908 to Frauhammer et al. Frauhammer et al show the same percussion mechanism for a hammering tool:

With respect to claim 9, a striker (17) axially displaceable in a guide barrel (13), a device (16) that exerts pressure on the striker, a tool bit (not shown) that is insertable into the hand tool (10) of the percussion mechanism, a blocking element (23,31) that is capable of blocking the striker in its forward motion and wherein the striking frequency of the striker is capable of being adjusted by changing the time of that the blocking element (13) prevents forward motion of the striker.

With respect to claim 10, a pressure reservoir (25) that is fillable with a gas and located on a side of the striker diametrically opposite the tool bit holder (20).

With respect to claims 11 and 15, air is delivered into and out of the pressure reservoir (25) via valve (26). The pressure reservoir is sealed via (15) covering (26) thereby increasing the pressure within the reservoir and gas pressure is also released when valve (26) is uncovered and the pressurized gas exits.

With respect to claim 12, the amount of gas delivered to the reservoir (25) through valve (26) is capable of being controlled.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,675,908 to Frauhammer et al. Frauhammer et al show the invention substantially as claimed; however,

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With respect to claims 13 and 14, Frauhammer et al do not explicitly show or mention a pump device for delivering gas to the pressure reservoir. However, it is well known and common in the art hand held power tools to operate either with an external air source or an internal pump located within the tool. It would have been obvious to one skilled in the art to configure/modify the tool of Frauhammer et al in order to include its own pump device for supplying gas to the pressure reservoir since such a modification is within the engineering purview of the skilled artisan concerned with providing a mobile and cordless power tool.

With respect to claim 16, insofar as the invention is understood, it is reasonable to conclude that blocking time of the blocking member controllable as a function of a user-selectable striking frequency. The user operates the hammer tool via a trigger mechanism which either directly controls the amount of gas pumped into the pressure reservoir or controls the operation of a motor that operates the piston (16) that pressurizes the gas in the pressure reservoir. The blocking element (23,31) operates in response to the frequency of the striker (17) thereby making the blocking time a function of the user selection.

### ***Response to Arguments***

9. *In re* previous claim 1 (currently amended as claim 9) applicant's arguments filed 4/20/2007 have been fully considered but they are not persuasive. Applicant contends, *inter alia*, that neither Muetschele nor Frauhammer perform the same function as the claimed invention. Examiner acknowledges applicant's position; however, a reference is deemed to properly anticipate a claim when all the recited structural limitations are disclosed therein. In this instance, both Muetschele and Frauhammer clearly show all the recited structural limitations including a blocking element capable of blocking the striker in its forward motion and controlling the striking frequency of the percussion mechanism via changing the time of which the blocking element prevents forward movement of the striker. While it is noted that the device of Muetschele or Frauhammer may not perform the same function or in the same manner as applicant's invention, it is deemed that the claims are not restrictive to such device.

For the reasons above, the grounds for rejection are deemed proper.

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***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 6 p.m.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467. The official fax number for this Group is: 571-273-8300

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Brian D. Nash/  
Primary Examiner, Art Unit 3721

8/4/2007